

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1995, each agency shall begin the rulemaking process by first filing a Notice of Proposed Rulemaking, containing the preamble and the full text of the rules, with the Secretary of State's Office. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the Arizona Administrative Register.

Under the Administrative Procedure Act (A.R.S. § 41-1001 *et seq.*), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY AIR POLLUTION CONTROL

PREAMBLE

1. **Sections Affected** **Rulemaking Action**
R18-2-333 Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule are implementing (specific):**
Authorizing statute: A.R.S. § 49-104
Implementing statutes: A.R.S. §§ 49-425 and 49-426
3. **The name and address of agency personnel with whom persons may communicate regarding the rule:**
Name: Mark Lewandowski, Rule Development Specialist
Address: Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012-2809
Telephone: (602) 207-2230
Fax: (602) 207-2251

Name: Martha Seaman, Rule Development Section Manager
Address: Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012-2809
Telephone: (602) 207-2222
Fax: (602) 207-2251
4. **An explanation of the rule, including the agency's reasons for initiating the rule:**
SUMMARY: The Department of Environmental Quality (ADEQ) is proposing to incorporate by reference in R18-2-333 the following federal regulations to improve the implementation of the federal acid rain program:
 1. 40 CFR 74 (Sulfur Dioxide Opt-ins) (as of January 1, 1996)
 2. 40 CFR 75 (Continuous Emission Monitoring) (as of January 1, 1996)
 3. 40 CFR 76 (Acid Rain Nitrogen Oxides Emission Reduction Program) (as of January 1, 1996)BACKGROUND: Title IV of the Clean Air Act (Act) requires EPA to establish an Acid Rain Program to reduce the adverse environmental and public health effects of acidic deposition. Under Titles IV and V of the Act, state and local permitting authorities develop and administer acid rain programs as part of their Title V operating permit programs. On October 7, 1994, ADEQ adopted R18-2-333, Acid Rain, which incorporated by reference federal regulations at 40 CFR 72 (Regulations on Permits) as they existed on July 1, 1993. The rule incorporated the "core" requirements of the federal Acid Rain Program. On March 29, 1995, EPA published a notice in the federal register indicating that the acid rain program submitted by ADEQ was acceptable to the Administrator as part of its Title V operating permits program. As part of that approval, ADEQ committed to EPA to make regulatory revisions as necessary to accommodate federal revisions and additions. ADEQ believes that 3 more parts need to be incorporated in order to adequately implement the acid rain program.

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PURPOSE OF PROPOSED RULE: Currently, all federal acid rain regulations are effective in Arizona as federal law but only the "core" acid rain regulations in Part 72 exist as Arizona law. The 3 new additional parts proposed to be incorporated in this rule will improve the implementation and enforcement of the related, referenced parts of the federal acid rain program within the current state program.

Part 74 Sulfur Dioxide Opt-ins. Promulgated by EPA on April 4, 1995, the Opt-in Program allows sources not required to participate in the Acid Rain Program the opportunity to participate on a voluntary basis. Combustion sources not otherwise required to reduce SO₂ emissions can opt in and make incremental, low-cost reductions, which can then be marketed as allowances in the acid rain trading system to sources such as utilities which may not wish to make the reductions or be able to make them at the same cost. Opt-in sources must obtain Title V permits. Under recent guidance, a source wishing to opt-in to the program in Arizona may have to apply directly to EPA for an opt-in permit and EPA would issue the opt-in permit, since Part 74 is not incorporated in Arizona regulations. As the general goal of Arizona's acid rain program is to have as much of the implementation as possible take place through the state rather than federal government, incorporation of Part 74 will allow Arizona to work more effectively with potential opt-in sources from the beginning.

Part 75 Continuous Emission Monitoring. Part 75 was promulgated effective January 11, 1993, to ensure compliance with the Act's Acid Rain Program. EPA received several petitions for review of the January 11, 1993, rule, and promulgated revisions to those rules pursuant to a settlement agreement on May 17, 1995. Due to initial adverse reaction to the portion of the May 17, 1995, rule dealing with alternative monitoring systems and opacity monitoring for a bypass stack, EPA again modified the rule effective September 7, 1995.

Parts 72, 74, and 76 regularly refer to the methods and procedures in Part 75. ADEQ will be implementing and enforcing the acid rain program through its Title V permits and believes that implementation of Parts 72, 74, and 76 will be improved with Part 75 as an Arizona regulation. ADEQ is proposing to adopt the version of Part 75 that was effective as of January 1, 1996.

Part 76 Acid Rain Nitrogen Oxides Emission Reduction Program. EPA promulgated Part 76 on March 22, 1994, about 1 week after ADEQ proposed its core acid rain program rule. However, the federal rule, which applies mainly to Phase I sources, was vacated by a federal court soon thereafter. EPA repromulgated a direct final rule based on the Court's decision and a review of the record effective May 23, 1995. Although there are no Phase I acid rain sources in Arizona, ADEQ may receive Phase II applications as soon as its Title V program is approved. ADEQ believes that it is now appropriate to incorporate Part 76 because most of the rule that will soon apply to Phase II sources is now in place.

For consistency, Part 72 is being updated to the same date as the 3 new parts, January 1, 1996. However, DEQ is not specifically aware of any revisions made to Part 72 between July 1, 1995, and January 1, 1996.

5. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority to a political subdivision of this state:

Not applicable. The 3 counties having jurisdiction over air pollution separately from ADEQ, pursuant to A.R.S. Title 49 (Maricopa, Pima, and Pinal counties) have EPA-approved acid rain programs and may each incorporate by reference the same rules incorporated in this rulemaking.

6. The preliminary summary of the economic, small business, and consumer impact, and solicitation of comments on the summary:

Since the federal law to be incorporated by this rule is already effective in Arizona, ADEQ has determined that there will be no direct economic, small business, or consumer impact from this rule. ADEQ anticipates that there may be indirect impacts as implementation of portions of the acid rain program shift formally from EPA to ADEQ. Based on experience in other areas, ADEQ believes that the increased state control of the acid rain program will allow for more efficient and responsive implementation, a benefit to regulated businesses, large and small. Added cost to ADEQ connected with the formal implementation of additional portions of the acid rain program will be negligible; no extra positions will be added because ADEQ had presumed the same amount of program tasks whether or not it was identified as the primary authority. Comments regarding state versus federal implementation of these portions of the acid rain program, or on any aspect of the economic, small business, and consumer impact of this rule should be sent to the contact listed below.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Mark Lewandowski, Rule Development Specialist

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3033 North Central Avenue
Phoenix, Arizona 85012-2809

Telephone: (602) 207-2230

Fax: (602) 207-2251

Name: Martha Seaman, Rule Development Section Manager

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8. The time, place, and nature of the proceedings for the adoption of the rule:

Oral proceedings will be conducted on:

Date: March 18, 1996

Time: 10 a.m.

Location: Department of Environmental Quality - Public Meeting Room
3033 North Central Avenue
Phoenix, Arizona

The close of written comment is: March 20, 1996, at 5 p.m.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable.

10. Incorporations by reference and their locations in the rules:
R18-2-333.

11. The full text of the rules follows:

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CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

ARTICLE 3. PERMITS AND PERMIT REVISIONS

Section

R18-2-333. Acid Rain

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-333. Acid Rain

A. The following subparts of 40 CFR 72, Permits Regulation, and all accompanying appendices, adopted as of ~~July 1, 1995~~ January 1, 1996, are incorporated by reference. These standards are on file with the Office of the Secretary of State and with the Department and shall be applied by the Department.

1. Subpart A - Acid Rain Program General Provisions.
2. Subpart B - Designated Representative.
3. Subpart C - Acid Rain Applications.
4. Subpart D - Acid Rain Compliance Plan and Compliance Options.
5. Subpart E - Acid Rain Permit Contents.

6. Subpart F - Federal Acid Rain Permit Issuance Procedures.
7. Subpart G - Acid Rain Phase II Implementation.
8. Subpart H - Permit Revisions.
9. Subpart I - Compliance Certification.

B. 40 CFR 74, 75, and 76 and all accompanying appendices, adopted as of January 1, 1996, are incorporated by reference. These standards are on file with the Office of the Secretary of State and with the Department and shall be applied by the Department.

B.C. When used in 40 CFR 72, 74, 75, and 76, "Permitting Authority" means the Department of Environmental Quality and "Administrator" means the Administrator of the United States Environmental Protection Agency.

C.D. If the provisions or requirements of the regulations incorporated pursuant to this Section conflict with any of the remaining portions of this ~~Title Article~~, the regulations incorporated pursuant to this Section shall apply and take precedence.